

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX: AT KINGSHILL

GOVERNMENT OF THE VIRGIN ISLANDS)

EX REL: MARION CHRISTIAN)

Plaintiff,)

vs)

TERRANCE H.B. FREDERICK)

Defendant.)

CASE NO: FAM S72/1987
ACTION FOR SUPPORT

GERALD A. SIMS, ESQ.
Assistant Attorney General
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(DEFENDANT APPEARING PRO SE)

ELTMAN, Judge

MEMORANDUM OPINION
(August 28, 1987)

This is an action for support. The relator has filed a petition on behalf of her son, Ian M. Frederick, seeking support from Terrance H.B. Frederick. The defendant has acknowledged paternity.

Ian M. Frederick is nineteen years old and is attending college as a full-time student on the United States mainland. The cost of his schooling is approximately \$12,000 per year. During the months that Ian is not away at school, he lives with his mother.

The relator earns \$16,700 per annum or approximately \$1,285 every four weeks. Her monthly expenses include: \$84 for mortgage, \$250 for food, \$20 for clothing, \$72 for transportation, \$67 for home insurance, \$133 for automobile insurance, \$32 for property tax, \$75 for telephone service, \$21 for cooking gas, \$88 for electricity, \$30 for cable television and \$48 for entertainment. The total of the mother's monthly expenses is \$920.

The defendant, an engineer, stated that his total income for 1987 is a mere \$600. According to his testimony, during the three year period from 1984-1986, his income averaged somewhere between \$8,000 to \$9,000. One year in the early 1970's, he made \$35,000. He is currently on contract with Carambola Beach Resort and works as an engineering consultant. The defendant is also in the process of setting up an engineering business. He listed his monthly expenses as \$375 for mortgage, \$200 for rent, \$400 for food, \$150 for clothing and \$189 for telephone service. In addition, the respondent has another family for which he provides support.

Mr. Frederick is the owner of a home in Trinidad, valued at \$40,000. His equity in the house is \$20,000. He also owns a business in Trinidad which has a registered value of \$25,000 and a real value of one half that amount. In addition, the defendant owns 60 acres of land in Trinidad and Tobago which

he claims has a value of \$5,000. He has \$5,750 in cash on deposit in a bank account.

DISCUSSION

Parents are obligated to provide support for their children and that obligation includes providing for the education of the child. Government of the Virgin Islands ex rel: Durham v. Mohammed, Docket No. S338/1973 (Terr. Ct. St. Croix, 1987); see, Rhymer v. Rhymer, Docket No. D193/1983 (Terr. Ct. St.T. & St.J. 1984). The duty does not necessarily cease when the child reaches eighteen. Lorillard v. Lorillard, 5 V.I. 483, 358 F.2d 172 (3d.Cir. 1966). In determining the extent of a support obligation, the Court must consider the resources of the parent and his or her ability to provide such support. 16 V.I.C. §345. In doing so, the Court is not limited to the income of the parent but may consider his or her entire assets including fixed or capital assets, Kern v. Kern, 319 N.Y.S.2d 178, 184 (N.Y. Fam. Ct. 1970), as well as potential earning power if there is a disparity between the parent's actual income and his or her earning capacity. Commonwealth ex rel. Hagerty v. Eyster, 429 A.2d 665, 668 (Pa. Super. 1981); Woolams v Woolams, 251 P.2d 392 (Cal. Dist. Ct. App. 1952).

Ian Frederick is in need of support to complete his college education. Since that expense is in excess of \$12,000 per year, he is in need of at least \$1,000 every month. Even

though Ian works during the summer months, his earnings cannot begin to meet such a cost.

The mother is not in a position to provide a substantial contribution toward the completion of her son's education. Moreover, since Ian lives with her during the times he is not at school, the Court considers this contribution by the mother as fulfillment of part of her obligation to provide support for the child.

The father, in the other hand, has the resources to provide the necessary support for the education of his child. While the defendant has stated that his income so far this year is only \$600, this testimony does not in and of itself demonstrate his inability to provide support for Ian. A review of his assets, as outlined above indicates otherwise.

The father has assets which he can liquidate, if necessary, to enable him to meet his support obligations. Woolams, supra at 395. Moreover, his experience and profession, and the fact that he previously earned \$35,000 at the same work demonstrates that he has the potential to earn more than \$600 in eight months.

CONCLUSION

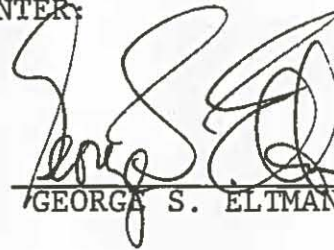
Considering the needs of the child coupled with the defendant's ability to provide support, \$400 per month represents a reasonable amount for the defendant to pay for his

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son's support. The defendant's obligation is by no means long-term; it shall continue only until the child completes his undergraduate education, provided that he continues his status as a full-time student.

DATED: August 28, 1987

ENTER:

A handwritten signature in black ink, appearing to read "G. S. Eltman", is written over a horizontal line.

GEORGE S. ELTMAN, JUDGE

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O R D E R

In accordance with the Memorandum Opinion of even date, it is hereby

ORDERED that defendant shall provide support for his son, Ian M. Frederick, in the amount of \$400.00 per month, until the child completes his undergraduate education, provided that he continues his status as a full time student. It is further

ORDERED that defendant shall make payments pursuant to this order at the Justice Department, Division of Paternity and Child Support, Toro Building, Christiansted, St.Croix.

Dated: August 28, 1987

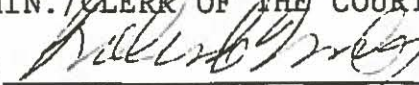


GEORGE S. ELTMAN, JUDGE

ATTEST:

VIOLA E. SMITH

ADMIN./CLERK OF THE COURT

BY: 

DEPUTY CLERK